

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

September 26, 2013 at 3:30 p.m.

1. [13-90901](#)-E-12 ANDREW NAPIER

CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
5-9-13 [[1](#)]

Debtor's Atty: Scott A. CoBen

The Status Conference is continued to -----, 20xx.

The Chapter 12 Plan was ordered confirmed by the court on September 5, 2013.
The order is pending.

Notes:

Continued from 6/13/13.

[SAC-1] Motion to Confirm Chapter 12 Plan filed 5/20/13 [Dckt 8]; Order denying filed 7/26/13 [Dckt 164]

[SAC-2] Motion to Value Collateral of Ally Financial filed 5/20/13 [Dckt 13]; Order granting filed 7/2/13 [Dckt 102]

[SAC-3] Motion to Value Collateral of Bank of the West filed 5/20/13 [Dckt 17]; Order granting filed 7/2/13 [Dckt 103]

[SAC-4] Motion to Value Collateral of CNH Capital America, LLC, filed 5/20/13 [Dckt 21]; Order dismissing filed 7/16/13 [Dckt 130]

[SAC-5] Motion to Value Collateral of Ervin Leasing Company filed 5/20/13 [Dckt 25]; Order granting filed 7/2/13 [Dckt 108]

[SAC-6] Motion to Value Collateral of Deere and Company filed 5/20/13 [Dckt 29]; Order dismissing filed 7/11/13 [Dckt 128]

[SAC-7] Motion to Value Collateral of Mesa Leasing, Inc. filed 5/20/13 [Dckt 33]; Order dismissing filed 8/5/13 [Dckt 168]

[EMS-1] Movant, Mesa Leasing, Inc.'s Motion for Relief from Automatic Stay filed 5/31/13 [Dckt 45]; Order granting filed 8/8/13 [Dckt 175]

[CCR-1] Motion for Relief from Stay, or, in the Alternative, Motion for Adequate Protection filed 6/13/13 [Dckt 55]; Order granting motion for relief filed 7/26/13 [Dckt 163]

September 26, 2013 at 3:30 p.m.

2. [11-94004-E-11](#) LUIS/ANGELA SOUSA

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
11-18-11 [[1](#)]

Debtors' Atty: Thomas O. Gillis

Notes:

Continued from 6/27/13

Operating Reports filed: 8/29/13 [Jun, Jul, May]; 8/29/13 [amd Jun]; 9/14/13 [Aug]

Order Approving Disclosure Statement filed 7/8/13 [Dckt 329]

Status Report filed 9/18/13 [Dckt 349]

[TOG-8] Motion to Value Collateral on Subject Rental Property (First Note and Lien Held by Bayview Loan Servicing, LLC) filed 2/2/13; Order approving stipulation setting valuation of real property filed 7/17/13 [Dckt 334]

3. [11-94004-E-11](#) LUIS/ANGELA SOUSA
TOG-14

CONFIRMATION OF PLAN OF
REORGANIZATION FILED BY DEBTORS
7-1-13 [[324](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors requesting special notice and on Office of the United States Trustee on July 16, 2013. By the court's calculation, 72 days' notice was provided.

Tentative Ruling: The Confirmation of Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The court's tentative decision is to deny Chapter 11 Plan of Reorganization.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

<u>7/17/13</u>	Plan, Disclosure Statement, Disc Stmt Order, and Ballots Mailed
<u>8/18/13</u>	Last Day for Submitting Written Acceptances or Rejections
<u>8/18/13</u>	Last Day to File Objections to Confirmation
<u>9/3/13</u>	Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
2.1	For: 1 Against: 0	100%	100%
2.2	For: 0 Against: 0	N/A	N/A
2.3	For: 0 Against: 0	N/A	N/A
2.4	For: 1 Against: 0	100%	100%
2.5	For: 0		

	Against: 1*+ *Vote was not timely and Debtor has arrived at Stipulation with Creditor + Creditor filed opposition		
2.6	For: 0 Against: 0	N/A	N/A
2.7	For: 1 Against: 0	100%	100%
2.8	For: 0 Against: 0	N/A	N/A
3	For: 1 Against: 0	100%	100%
5 unsecured claims	For: 0 Against: 3	100% against	100% against
5 bifurcated unsecured claims	For: 3 Against: 0	100%	100%
5 unsecured secured claim	For: 0 Against: 1*+ *Vote was not timely and Debtor has arrived at Stipulation with Creditor + Creditor filed opposition		

Debtor states that the total unsecured claims total \$1,043,477.34, and the group accepting the plan total \$587,732.16. Debtor argues that the majority of the unsecured claims have voted yes.

U.S. BANK, N.A. OPPOSITION

U.S. Bank National Association, as Trustee for GSAA Home Equity Trust 2006-20, Asset-Backed Certificates, Series 2006-20, opposed confirmation for several reasons. However, the court notes that a Stipulation was filed to resolve this Objection between Creditor and Debtor on September 24, 2013. Dckt. 350.

DISCUSSION

Debtors have failed to file a Declaration filed in support of confirmation that provides evidence of the compliance with the necessary elements for confirmation in 11 U.S.C. §1129:

11 U.S.C. § 1129(a) .

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence:

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

Evidence:

3. The plan has been proposed in good faith and not by any means forbidden by law.

Evidence:

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Evidence:

5. (A) (i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Evidence:

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Evidence:

7. With respect to each impaired class of claims or interests--

(A) each holder of a claim or interest of such class--

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title [11 USCS § 1111(b)(2)] applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Evidence:

8. With respect to each class of claims or interests--

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

Evidence:

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that--

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Evidence:

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive--

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Evidence:

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash--

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

Evidence:

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Evidence:

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

Evidence:

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Evidence:

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title [11 USCS § 1114], at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title [11 USCS § 1114], at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

Evidence:

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan--

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

Evidence:

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

Evidence:

11 U.S.C. § 1129(b)

1. Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

Evidence:

2. For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides--

(i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

Evidence:

(B) With respect to a class of unsecured claims--

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

Evidence:

(C) With respect to a class of interests--

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

CONCLUSION

Based on the lack of evidence filed in support of confirmation, the court denies the motion to confirm the Chapter 11 plan.

4. [13-90935](#)-E-12 ARTURO/RAMONA ROMERO
KDG-5

MOTION TO CONFIRM CHAPTER 12
PLAN BY DEBTORS
8-12-13 [[44](#)]

Final Ruling: At the request parties and pursuant to the Order on Stipulation to Continue Hearing, Dckt. 75, the hearing on this matter is continued to **3:30 p.m. on October 31, 2013**. No appearance required at the September 26, 2013 hearing.

5. [13-90935](#)-E-12 ARTURO/RAMONA ROMERO
MHK-1

MOTION FOR MODIFICATION OF THE
AUTOMATIC STAY
8-27-13 [[49](#)]

AMERICAN EQUITY SERVICE,
INC. VS.

Final Ruling: At the request parties and pursuant to the Order on Stipulation to Continue Hearing, Dckt. 75, the hearing on this matter is continued to **3:30 p.m. on October 31, 2013**. No appearance required at the September 26, 2013 hearing.

6. [13-90643](#)-E-12 GARY/CHRISTINE TAYLOR
ADJ-4

CONTINUED MOTION TO CONFIRM
CHAPTER 12 PLAN
7-3-13 [[51](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 12 Trustee, all creditors, and Office of the United States Trustee on July 3, 2013. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

Final Ruling: The Motion to Confirm Chapter 12 Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The court's decision is to grant the Motion to Confirm Chapter 12 Plan. No appearance at the September 26, 2013 hearing required.

PRIOR HEARING

Debtors move to confirm their Chapter 12 plan dated July 3, 2013. Debtors farm almonds as sole proprietors on 40 acres in Stanislaus County and also own a 50% membership interest in G&J Farms, LLC, which farms almonds on 150 acres of land in Stanislaus County on a long-term lease.

WELLS FARGO BANK, N.A.'S OPPOSITION

Creditor Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Creditor") opposes the plan on the grounds that its claim for deficiency

balance should be allowed because in the absence of overruling federal law, state and contract law created and defines all interest in claims.

Creditor argues that the plan proposes to surrender its collateral, Debtor's 2006 Travel Supreme Select, to satisfy the claim and Creditor would receive no other distribution. The plan proposes to pay unsecured creditors a 6% dividend. Creditor states that the surrendering of the vehicle does not satisfy its claim.

Creditor seeks that the plan be denied or amended to allow Creditor's unsecured claim for any deficiency balance remaining on Debtor's account after disposition of the vehicle.

DEUTSCHE BANK NATIONAL TRUST COMPANY'S OPPOSITION

Deutsche Bank National Trust Company, as Trustee of the Indymac INDX Mortgage Trust 2007-AR15, Mortgage Pass-through Certificates, Series 2007-AR15 Under the Pooling and Servicing Agreement dated June 1, 2007, as serviced by OneWest Bank, FSB, ("DBNTC") opposes the motion to confirm on the grounds that the plan fails to correctly provide for its claim, as the plan provides for its claim in the amount of \$750,000.00, when the parties agreed at the Motion to Value that the value is \$800,000.00. DBNTC also argues that the plan does not reflect the other terms that have been agreed to by the parties, including the interest rate of 5%.

Based on these terms, the monthly payments under the plan to DBNTC are incorrect and should be amended. DBNTC expects this to be resolved by Stipulation before the hearing.

STIPULATION

Debtor and Creditor Wells Fargo Bank, N.A. filed a stipulation agreeing that Debtor will provide for the unsecured claim to be included in Class 8 for similarly situated unsecured claims at a 6% dividend for any deficiency balance remaining on Debtor's account after disposition of the vehicle.

A Stipulation with Deutsche Bank National Trust Company was filed on August 22, 2013. This is represented to resolve that creditor's objection that the plan does not provide for the full value of the obligation as determined by the court and both parties.

DISCUSSION

Upon review of the proposed Chapter 12 Plan, the evidence in the form of the declaration of Gary V. Taylor, the Debtor, and arguments of counsel, the court makes the following findings of fact and conclusions of law in support of confirmation of the Chapter 12 Plan pursuant to 11 U.S.C. § 1224.

(1) the plan complies with the provisions of Chapter 12 of the Bankruptcy Code and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28 [28 USCS §§ 1911 et seq.], or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of the Bankruptcy Code on such date;

(5) with respect to each allowed secured claim provided for by the plan-

(A) the holder of such claim has accepted the plan;

(B) (i) the plan provides that the holder of such claim retain the lien securing such claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan; and

(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.

Notwithstanding the objection of the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan-

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;

(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c) [11 USCS § 1222], beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c) [11 USCS § 1222(c)], beginning on the date

that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended--

(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(B) for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

The Plan does comply with 11 U.S.C. § 1225 and is confirmed.

Counsel for the Debtors in Possession shall prepare an order confirming the plan, to which the plan is attached as an exhibit, and lodge said proposed order with the court.

7. [11-94146](#)-E-11 DOMINIC/MARIA DEPALMA

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
12-2-11 [[1](#)]

Debtors' Atty: Naresh Channaveerappa

Final Ruling: The Status Conference is continued to 10:30 a.m. on October 10, 2013, to be heard in conjunction with a motion to dismiss this bankruptcy case. No appearance at the September 26, 2013 Status Conference is required.

Notes:

Continued from 8/1/13

Operating Report filed: 8/15/13

[TJS-1] Motion for Relief from Automatic Stay filed by JPMorgan Chase Bank, N.A. 7/1/13 [Dckt 340]; Stipulation filed 9/3/13 [Dckt 361]; Order approving stipulation filed 9/18/13 [Dckt 373]

[DJP-1] Farmers & Merchant Bank of Central California's Motion for Order Dismissing Chapter 11 Case filed 9/12/13 [Dckt 366], set for hearing 10/10/13 at 10:30 a.m.

Consent Order Granting Substitution of Attorney filed by the Debtors 9/17/13 [Dckt 375]

[Dckt 376] filed 9/20/13: Stipulation to Continue Status Conference to 10/10/13 at 10:30 a.m. to be heard in conjunction with motion to dismiss; order pending

8. [12-93049](#)-E-11 MARK/ANGELA GARCIA
MJH-11

APPROVAL OF DISCLOSURE
STATEMENT FILED BY DEBTORS
7-24-13 [[187](#)]

Local Rule 9014-1(f) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 24, 2013. By the court's calculation, 64 days' notice was provided.

Tentative Ruling: The Motion to Approve Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1).

The court's tentative decision is to deny the Motion to Approve Disclosure Statement. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: November 30, 2012

Background: The Debtors are individuals, Mark and Angela Garcia, and have been in the business of operating a bail bond agency in Modesto, California. The debtors formerly operated under a corporation, Garcia Family Bail Bond, Inc., but shortly before the bankruptcy Debtors closed out the corporation and now operate it as a sole proprietorship. The business suffered from the general downturn in the economy. Debtors have also been involved in two state litigation cases in the last four years which have resulted in large amounts of attorney fees. Debtors are also the owners and shareholders of The Most Wanted Wine Co., with nine acres of grapes planted at their home. Debtors were paying to have them harvested, pruned, crushed and bottled. However, the retail outlet Debtors had to sell the wine has closed and no customers are purchasing grapes. Debtors state no income will be generated from The Most Wanted Wine Co. business.

Creditor/Class	Treatment	
Administrative Expenses	Claim Amount	\$12,950.00 (estimated)
	Impairment	

	Professional Fees \$12,000.00 Office of the U.S. Trustee Fees \$950.00 Paid in full on the effective date of the Plan.	
Priority Tax Claims IRS FTB Gordon B. Ford	Claim Amount	\$30,931.47
	Impairment	
	IRS (Business) \$6,845.43 = five years with monthly payment \$123.00 with statutory interest rate IRS (Personal) \$12,083.21 = five years with monthly payment of \$217.12 with statutory interest rate FRB \$6,600.00 = five years with monthly payment of \$118.59 with statutory interest rate Gordon B. Ford \$5,402.83 = five years with monthly payment of \$137.20 with statutory interest rate	
Class 1: HSBC Bank First Deed of Trust on 56572 Eleanor Road, Oakdale, CA	Claim Amount	\$454,563.61
	Impairment	
	The first deed of trust will be modified and terms approved by the court, or an amount sufficient to pay the arrears in full over 5 years and the monthly mortgage will be paid to HSBC, or HSBC will receive the property. Entry of the order confirming Debtor's plan shall constitute an order modifying the automatic stay; to allow HSBC to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and non judicial remedies against its collateral. Debtors are attempting to modify the arrears and the monthly payment.	
Class 2: JPMorgan Chase Bank, N.A. Second Deed of Trust on 56572 Eleanor Road, Oakdale, CA	Claim Amount	\$254,992.88 unsecured
	Impairment	
	The court ordered that the secured claim of JPMorgan Chase Bank, N.A. is \$0.00. JP Morgan Chase Bank shall retain its lien until paid or upon completion of the plan.	

<p>Class 3: United States Fire Insurance Company</p> <p>Third Deed of Trust on 56572 Eleanor Road, Oakdale, CA</p>	Claim Amount	\$350,000.00
	Impairment	
	<p>The secured claim shall be paid at the sum of \$1,562.18 monthly beginning upon an order confirming Debtors plan. The term shall be 30 years with interest at 3.4%. This third deed of trust will be modified or paid under the plan, or USFI will receive the property. Entry of the order confirming Debtors plan shall constitute an order modifying the automatic stay; to allow USFI to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and non judicial remedies against its collateral.</p> <p>USFI also has a contingent claim of \$550,000, contingent upon bond exoneration or forfeiture. Several exonérations occurred after the claim was filed.</p>	
<p>Class 4: Realty California, LLC</p> <p>First Deed of Trust on 900 G Street, Modesto, CA</p>	Claim Amount	\$650,000.00 secured
	Impairment	
	<p>LSC Realty California LLC shall receive the sum of \$4,751.00 monthly, either in third party rents or payment by the debtors as needed. This sum is amortized over thirty years at 6.25% interest. This note shall balloon on February 28, 2017, plus post-petition accruals, as reserved by the filed proof of claims. Additionally, the sum of \$117,864.75 shall be deferred to the end of the loan term, without accrual of interest.</p> <p>LSC Realty California LLC filed an assignment of its interest on May 1, 2013, (DCN 138) to G Street Investments, LLC, but no evidence of the terms of transfer was filed by the transferee G Street Investments, LLC.</p>	
<p>Class 6: Bankers Surety Services, Inc.</p> <p>Third Deed of Trust on 900 G Street, Modesto, CA</p>	Claim Amount	
	Impairment	

	The court ruled that the secured claim of Bankers Surety Services, Inc. is \$0.00. Bankers Surety Services LLC shall retain its lien until paid or completion of the plan.	
Class 7: Gordon B. Ford Pre-petition real property taxes on 900 G Street, Modesto CA.	Claim Amount	\$16,878.16
	Impairment	
	The claim shall be paid within five years with statutory interest. The sum owed is \$16,878.16 excluding penalties. This claim shall be paid within five years at a monthly payment of \$428.59 upon confirmation of the debtors plan. Interest shall be the statutory rate currently 18%.	
Class 8: Travis Credit Union 2000 Mercedes Benz ML55	Claim Amount	\$7,163.57
	Impairment	
	Travis Credit Union shall retain its lien on the vehicle to the extent of its allowed claim and will receive deferred cash payments totaling at least the allowed amount of its claim. The claim shall be paid over five years with interest at 6.45 % with monthly payments of \$140.00., or shall receive its collateral.	
Class 8.1: General Unsecured Claims	Claim Amount	\$432,586.158
	Impairment	
	An objection to the claim of Pacific Bell Directory is pending, and if sustained the total filed unsecured sum would be: \$283,586.18. Any proposed distribution to unsecured creditors would be impacted if this objection is overruled. Debtors plan will propose a 100% distribution to general unsecured creditors in Class 8.1, again depending on whether the objection to the claim of Pacific Bell Directory is overruled, over a term of ten years.	
Class 8.2: Secured Claims who did not file an unsecured claim after a 506(a) ruling	Claim Amount	\$338,153.50
	Impairment	
	These two creditors will not receive a distribution under the Plan, consistent with the holding and principles in <i>In Re J.H. Investment Services</i> (2011), No. 15627, 11th Cir. Court of Appeals, holding that 506(a) (1) does not automatically create an unsecured claim in a Chapter 11 case and the creditor must file an unsecured claim to receive distribution.	

A. C. WILLIAMS FACTORS PRESENT

Y Incidents that led to filing Chapter 11
Y Description of available assets and their value
Y Anticipated future of the Debtor
____ Source of information for D/S
Y Disclaimer
Y Present condition of Debtor in Chapter 11
____ Listing of the scheduled claims
____ Liquidation analysis
____ Identity of the accountant and process used
____ Future management of the Debtor
Y The Plan is attached

In re A.C. Williams, 25 B.R. 173 (Bankr. N.D. Ohio 1982); see also *In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS:

CREDITOR IAIN MACDONALD'S OPPOSITION

Creditor Iain MacDonald opposes the Disclosure Statement for the reasons set forth in his Declaration in support of the Trustee's Motion to Convert or Dismiss. First, MacDonald states that Debtor's July 2013 MOR discloses for the first time the name of the family trust account. MacDonald states this raises issues, such as substantial cash is run through the account, the Debtor's testimony regarding the account is inconsistent, and the account is not a DIP account even though it was opened after the commencement of the case.

MacDonald also argues that at the 2004 examination of Mr. Garcia, he testified that the July 31 ending cash balance could not be reconciled with the purported net income for the period, Mr. Garcia made substantial cash expenditures which are not reflected on the MOR filed in this case and MR. Garcia is payment an architect to design improvements to a liquor store even though Debtors are not the owners of this property.

CREDITOR DEUTSCHE BANK NATIONAL TRUST COMPANY AMERICAS OPPOSITION

Creditor Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QS2, opposes the Approval of the Disclosure Statement on the grounds that Debtors are attempting to modify their principal residence which is not allowed under 11 U.S.C. § 1123(b)(5). Creditor also states that the disclosure statement is very vague as to how

their claim will be treated - as it states Debtors are attempting to modify the arrears and monthly payment to the Eleanor Property. Creditor cannot determine if they are attempting a loan modification, what modification is taking place, or whether this modification is through the plan.

CREDITOR UNITED STATES FIRE INSURANCE COMPANY'S OPPOSITION

Creditor United States Fire Insurance Company opposes the motion on the basis that their treatment is impractical infeasible and unacceptable. Creditor states the information presented is inadequate because the difference in valuations make a substantial difference in the rights and treatment of the secured or partially secured claims, and the resultant impact on the unsecured creditor body, if a claim should turn out to be completely unsecured. Creditor states the Debtors' have filed but then withdrew a motion to value the USFI secured claim. Dckts. 23 & 127.

Creditor also states that because under the Debtors' valuation the USFI claim is completely unsecured, and because under USFI's valuation it is either fully secured or partially secured, there should be some identification and description in the Disclosure Statement of USFI's unsecured claim. Creditor argues the portion of the USFI claim that is unsecured should be included in the class of unsecured claims.

Additionally, the Disclosure Statement should identify the Adversary Proceeding filed on August 23, 2013 by USFI against the Debtors (United States Fire Insurance v. Mark Anthony Garcia, et al., Adv. No. 13-09029) for which the answer is not yet due. The Disclosure Statement should identify the provisions for treatment and payment of that claim.

Creditor also states that the Disclosure Statement should address the issues raised by the UST in its motion to dismiss or convert and the discrepancies between the filed monthly reports and the bank statements.

Lastly, the Creditor argues that the disclosure statement should provide a description of the basis that the liquidation would result in the projected eight percent.

DEBTOR'S REPLY

Debtor's Counsel and Debtor also filed Declarations regarding the LSC Realty California, LLC and their interactions with Mr. MacDonald. Counsel states that Mr. MacDonald's declaration is false and all of his statements and declarations should be disregarded because he has tried to liquidate this case.

STANDARD:

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and

history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A.C. Williams, supra.*

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D.Cal. 1992).

5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

DISCUSSION

In the Disclosure Statement, Class 5 appears to be missing. The court notes that there is no class designated for Bankers Security Services, Inc.'s second deed of trust on the commercial property at 900 G Street, Modesto, California.

Furthermore, the Disclosure statement does not provide a liquidation analysis for the parties or the court to consider. The Debtors simply make the legal conclusion that the liquidation would result in eight percent.

It appears several events have also occurred since the filing of the disclosure statement, which are not included and effect the plan. First, JPMorgan Chase Bank, N.A. may have released their lien on the real property. Second, Creditor United States Fire Insurance Company also filed an adversary proceeding in order to determine the extent of its lien.

Based on the foregoing, the court denies the motion to approve the Disclosure Statement.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion For Approval of the Disclosure Statement filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

9. [13-91459](#)-E-11 LIMA BROTHERS DAIRY

STATUS CONFERENCE RE: VOLUNTARY
PETITION
8-7-13 [[1](#)]

Debtor's Atty: David C. Johnston

Notes:

Order to Show Cause re failure to prosecute filed 8/27/13 [Dckt 20], set for hearing 9/26/13 at 3:30 p.m.

Notice of Stipulation Between American AGCredit and Debtor to Use Cash Collateral Proceeds to Continue Servicing Loans filed 9/11/13 [Dckt 26]

Status Report filed 9/11/13 [Dckt 28]

Operating Report filed: 9/14/13

10. [13-91459](#)-E-11 LIMA BROTHERS DAIRY
RHS-1

ORDER TO SHOW CAUSE
8-27-13 [[20](#)]

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on all parties, on August 28, 2013. 29 days notice of the hearing was provided.

ORDER TO SHOW CAUSE

The Debtor having failed to file on or before August 21, 2013, the following necessary documents: Attorney's Disclosure Statement, List-20 Largest Unsecured Creditors, List-Equity Security Holders, Schedules A, B, D, E, F, G and H, Statement of Financial Affairs, and Summary of Schedules; the court ordered that Filipe C. Lima, the General Partner of Lima Brothers Dairy, debtor in the above-captioned case, and Anthony Johnston, and any other representative of the law firm of Johnston & Johnston who chooses to appear, to appear to show cause as to why the court should not dismiss this case for the failure of Debtor and counsel to actively prosecute.

RESPONSE

David C. Johnson, attorney of record for Lima Brothers Dairy filed a Declaration in response to the Order to Show Cause on September 12, 2013. Counsel acknowledges that the required documents were not filed by the deadline but that they were filed September 2, 2013. Counsel states the delay was due to his medical condition and inability to complete the documents or file a motion requesting additional time. Counsel apologizes and states the delay did not disrupt the meeting of creditors which was held and successfully concluded on September 5, 2013.